

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

STATE OF IOWA, ex rel., IOWA)
DEPARTMENT OF NATURAL)
RESOURCES (99AG23542),)

Plaintiff,)

vs.)

OSI INDUSTRIES, L.L.C.,)

Defendant.)

LAW NO. CVCV 104114

NOTE: Filed with Pottawattamie
County Clerk of Court on 12/7/10

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (IDNR) and for its claim against Defendant OSI Industries, L.L.C. (OSI Industries), states as follows:

Introduction

1. The State of Iowa Seeks the assessment of civil penalties and injunctive relief against Defendant OSI Industries for violating its National Pollutant Discharge Elimination System (NPDES) Permit by exceeding applicable effluent limitations for biological oxygen demand, total suspended solids, ammonia-nitrogen, oil and grease, and fecal coliform wastewater discharges; failing to timely submit an application to renew its NPDES permit; constructing twenty-two (22) air emission units without first obtaining the proper air quality construction permits; failing to timely apply for a Title V operating permit; and operating a major source of air pollution without a Title V permit.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. The Iowa Department of Natural Resources (IDNR) is a duly constituted agency

of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant OSI Industries is a limited liability company organized under the laws of Delaware, with its principal place of business at 1225 Corporate Boulevard, Aurora, IL 60504. OSI Industries merged with Oakland Foods, L.L.C., the prior owner of the facility at issue, on June 28, 2008, and became the owner of the facility, which is located at 21876 North Highway 59, Oakland, Iowa 51560.

Definitions

5. “Air contaminant” means “dust, fume, mist, smoke, other particulate matter, gas, vapor . . . odorous substance, radioactive substance, or any combination thereof.” Iowa Code § 455B.131(1).

6. “Air pollution” means “presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.” Iowa Code § 455B.131(3).

7. “Effluent standard” means “any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological, and other constituents, which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard, or other limitation.” Iowa Code § 455B.171(6).

8. “Equipment” means “equipment capable of emitting air contaminants to produce air pollution such as fuel burning, combustion or process devices or apparatus including but not limited to fuel-burning equipment.” 567 Iowa Admin. Code 20.2.

9. “Major source” includes “any stationary source . . . of air pollutants, as defined in Section 302 of the Act [42 U.S.C. 7602(g)], that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant.” 567 Iowa Admin. Code 22.100.

10. “Major stationary source” means “a stationary air contaminant source which directly emits, or has the potential to emit, one hundred tons or more of an air pollutant per year including a major source of fugitive emissions of a pollutant as determined by rule by the department [DNR] or the administrator of the United States [E]nvironmental [P]rotection [A]gency [EPA].” Iowa Code § 455B.131(8).

11. “Point source” means “any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged.” Iowa Code § 455B.171(17).

12. “Potential to emit” means the “maximum capacity of a stationary source to emit a pollutant under its physical and operational design as defined in rules adopted by the department.” Iowa Code § 455B.131(11).

13. “Pollutant” means “sewage, industrial waste, or other waste.” Iowa Code § 455B.171(18).

14. “Stationary source” means “any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act [42 U.S.C. § 7412(b)].” 567 Iowa Admin. Code 22.100.

15. “Treatment works” means “any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes.” Iowa Code § 455B.171(35).

16. “Water of the state” means “any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.” Iowa Code § 455B.171(37).

17. “Water pollution” means “the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life.” Iowa Code § 455B.171(38).

Jurisdiction

Water Quality Regulations

18. The IDNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). The IDNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5).

19. The Iowa Environmental Protection Commission (EPC) has authority to establish water quality standards, pretreatment standards, and effluent standards; adopt rules relating to the location, construction, operation, maintenance, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa Code §§ 455A.6(6)(a) and 455B.173(2), (3) and (6). The EPC’s rules implementing these provisions are contained in 567 Iowa Admin. Code 60-69.

20. The dumping, depositing, or discharging of pollutants into any water of the state

is prohibited, except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the IDNR. Iowa Code § 455B.186(1).

21. No person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the IDNR. 567 Iowa Admin. Code 64.3(1).

22. Any NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for re-issuance of the permit at least one hundred and eighty (180) days prior to the expiration of the permit. 567 Iowa Admin. Code 64.8(1)“a”.

23. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency. Iowa Code § 17A.18(2).

24. All Iowa surface waters are to be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. 567 Iowa Admin. Code 61.3(2)“b”.

25. All Iowa surface waters are to be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. 567 Iowa Admin. Code 61.3(2)“c”.

26. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, or order issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

27. The Attorney General is authorized, at the request of the IDNR director with

approval of the EPC, to initiate any legal proceedings, including an action for injunction or temporary injunction, necessary to enforce the penalty provisions of said statutes and any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

Air Quality Regulations

28. The IDNR is the agency of the state responsible for the prevention, abatement or control of air pollution. Iowa Code § 455B.132.

29. The Iowa EPC also has authority to establish rules to abate, control, or prevent air pollution; establish ambient air quality standards, emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source; require owners or operators of any air contaminant source to establish and maintain records and monitor emissions; and require operating and construction permits for the operation of an air contaminant source. Iowa Code §§ 455A.6(6)(a) and 455B.133(2), (3), (4), (5), (6), and (8). The EPC's rules implementing these provisions are contained in 567 Iowa Admin. Code 20-29, 31-35.

30. The IDNR Director shall grant, modify, suspend, terminate, revoke, reissue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment. Iowa Code § 455B.134(3). No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction permit has been issued. Iowa Code § 455B.134(3)(a).

31. No person shall construct, install, reconstruct, or alter equipment or control equipment without first obtaining a construction permit, unless exempted under 567 Iowa Admin. Code 22.1(2). 567 Iowa Admin. Code 22.1(1).

32. Any person who operates a “major source” is required to obtain a Title V operating permit. 567 Iowa Admin. Code 22.101(1)“b”.

33. A facility must submit a timely application within 12 months of becoming subject to the Title V operating permit requirements. 567 Iowa Admin. Code 22.105(1)“a”(2).

34. Any person who violates any provision of Iowa Code section 455B, Division II or any order, permit, or rule issued thereunder shall be subject to a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each day of such violation. Iowa Code § 455B.146.

35. The Attorney General, at the request of the IDNR or its director, may institute a civil action for injunctive relief to prevent any further violations of the rules, permits, or orders. Iowa Code § 455B.146.

Facts

OSI Industries’ Oakland Facility (“facility”)

36. Defendant OSI Industries is a food production company with a cooked meat production facility at 21876 North Highway 59 in Pottawattamie County, Iowa. The facility has the production capacity of over one hundred million (100,000,000) pounds per year of meat products, including bacon, sausage, and hot dogs. The industrial wastewater produced from the meat production is treated through a wastewater treatment works, which consists of two anaerobic lagoons, one twenty-seven acre facultative lagoon and a quiescent cell. The facility has eleven smokehouses and eleven cooking or microwave lines used to process the meat, which emit particulate matter, volatile organic compounds, sulfur dioxide, nitrogen oxides, and carbon monoxide.

Water Quality Issues

37. The facility discharges its wastewater into an unnamed tributary to the West

Nishnabotna River. Wastewater discharged from the facility's treatment works constitutes a "pollutant" as defined in Iowa Code section 455B.171(18). The West Nishnabotna River and its unnamed tributary stream, watercourses, waterways and drainage systems are each a "water of the state" as defined in Iowa Code section 455B.171(37).

38. On December 30, 2002, the IDNR issued National Pollutant Discharge Elimination System (NPDES) Permit No. 7856100 to the facility, a copy of which is attached, marked as Exhibit A and incorporated by reference. The NPDES permit established effluent limitations for biological oxygen demand (BOD), total suspended solids (TSS), ammonia nitrogen (NH₃-N), fecal coliform, and oil and grease. The effluent limitations provided thirty (30) day average and/or daily maximum limitations for the concentration (strength) and/or mass (weight) of BOD, TSS, NH₃-N, fecal coliform, and oil and grease. The NPDES permit further required the facility to sample the effluent discharge and submit monthly reports with the results of monitoring to the IDNR.

39. Condition 8 of NPDES Permit No. 7856100 requires the facility operate all facilities and control systems as efficiently as possible and maintain the facilities and control systems in good working order. Condition 8 also states that the facility shall retain sufficient, adequately trained and knowledgeable staff, and provide appropriate quality assurance procedures to maintain compliance with the conditions of the permit.

40. Condition 14 of NPDES Permit No. 7856100 requires the facility to report any noncompliance that may endanger human health or the environment to the IDNR within twenty-four (24) hours of becoming aware of the noncompliance. The following instances of noncompliance must be reported within twenty-four (24) hours of occurrence: any unanticipated bypass which exceeds any effluent limitation in the permit; any upset which exceeds any effluent

limitation in the permit; and any violation of a maximum daily discharge limit for any of the pollutants listed by the Director in the permit. NPDES Permit No. 7856100, Condition 14(a)-(c).

41. Condition 17(a) of NPDES Permit No. 7856100 requires the facility to provide notice to the IDNR of changed conditions at the facility that may result in new or increased discharges of pollutants.

42. The Defendant has expanded its Oakland Foods facility numerous times since it began operation in 1996. In 1999, the Defendant added 50,000 square feet to the facility. In 2004, the Defendant added an additional 20,000 square feet to the plant. The Defendant also added a microwave bacon cooking line to the facility in 2006 and another line in 2007.

43. On May 1, 2007, the IDNR sent the facility an application for renewal of its NPDES permit. Along with this application was a letter explaining that their current NPDES permit would expire on December 29, 2007, and therefore, a complete renewal application and fee needed to be submitted to the IDNR no later than June 29, 2007.

44. On September 17, 2007, the IDNR sent the facility a Notice of Violation for failure to submit a timely renewal application for its NPDES permit.

45. On September 24, 2007, IDNR Field Office 4 received a complaint alleging that wastewater from the facility's anaerobic lagoons was overflowing. Upon receipt of the complaint, the IDNR investigated the complaint and observed that the north anaerobic lagoon was overflowing its banks and discharging overland into the facultative lagoon.

46. On October 12, 2007, the IDNR conducted a follow up inspection of the facility. During the inspection, the IDNR observed and photographed narrative water quality violations in the tributary to the West Nishnabotna River, including foam on the water, discoloration of the

water, and a meat odor to the water. The IDNR collected wastewater samples and sent them to a laboratory.

47. On October 23, 2007, the IDNR, upon receipt of the laboratory analysis results, issued a Notice of Violation to the facility for exceeding its NPDES permit effluent limitations and water quality standards. The NH₃ concentration limit in the NPDES permit for the month of October was 12.8 mg/L. The IDNR samples showed the following NH₃ concentration limits: 0.15 mg/L upstream of Oakland Foods facility; 14 mg/L at the discharge point at the Oakland Foods facility; and 7.1 mg/L downstream of the Oakland Foods facility.

48. On October 31, 2007, the IDNR received, from the facility, an incomplete renewal application for an NPDES permit.

49. On December 29, 2007, the facility's NPDES Permit No. 7856100 expired.

50. On December 31, 2007, the IDNR sent the facility a letter informing it that the permit renewal application submitted on October 31, 2007, was incomplete because it did not contain analytic results for chemical oxygen demand and total organic carbon.

51. On January 29, 2008, the facility submitted a complete NPDES permit renewal application, and under Iowa Code section 17A.18(2), the existing NPDES permit and its accompanying effluent limitations are still in effect.

52. On June 22, 2009, the IDNR approved a permit for the construction of a Sequencing Batch Reactor (SBR) treatment system to treat the effluent from the existing anaerobic lagoons at the facility.

53. On January 5-6, 2010, the Environmental Protection Agency (EPA) performed an inspection of the facility for compliance with the NPDES permit. The EPA concluded that the facility's effluent flow measurement system was not in compliance with the NPDES permit. The

permit requires a twenty-four (24) hour total flow measurement of both the influent and the effluent seven (7) days per week. The facility was estimating the twenty-four (24) hour total flow based upon one instantaneous reading per day done by the facility.

54. The Defendant has submitted Monthly Operation Reports (MORs) to the IDNR which report discharges of wastewater into a water of the state at levels exceeding monthly average and/or daily maximum effluent limitations for mass and/or concentration for biological oxygen demand (BOD), total suspended solids (TSS), ammonia-nitrogen (NH₃-N), oil and grease, and/or fecal coliform during the period including but not limited to May, June, October, November, and December of 2007; March, April, May, and June of 2008; January, February, March April, May, June, November, and December of 2009; and January, March, April, May, June, and July of 2010.

Air Quality Issues

55. Emissions from the facility's eleven smokehouses and eleven cooking or microwave lines include matter that constitutes "air contaminants" as defined in Iowa Code section 455B.131(1).

56. On December 4, 2007, the IDNR conducted a site visit of the facility. During the inspection, the IDNR identified numerous air quality emission units that needed construction permits and others that possibly needed construction permits.

57. On December 12, 2007, the IDNR sent the facility a letter that discussed the results of the site visit and asked that the facility submit a complete response to the letter within sixty (60) days of receipt to determine whether other permits were required.

58. On February 11, 2008, the facility submitted its response to the IDNR's letter referenced in the previous paragraph, which included air quality construction permit applications

for twenty two (22) emission units. These emission units have been installed over the years 1995-2007 without construction permits and had the potential to emit a regulated air pollutant.

59. Based upon a review of these application permits, the IDNR established that the facility became a major source of air pollutants under Title V of the Clean Air Act in 1998, because the facility has since then had the potential to emit over 100 tons per year of particulate matter (PM) and fine particulate matter (PM₁₀).

60. On June 18, 2008, the IDNR approved Air Construction Permit Nos. 08-A-089, 08-A-090, 08-A-091, 08-A-092, 08-A-093, 08-A-094, 08-A-095, 08-A-096, 08-A-097, 08-A-098, 08-A-099, 08-A-100, 08-A-101, 08-A-102, 08-A-103, 08-A-104, 08-A-105, 08-A-106, 08-A-107, 08-A-108, 08-A-109, 08-A-110, 08-A-111, 08-A-112, 08-A-140, 08-A-141, submitted by the facility. The permits limit the facility's emissions to less than 100 tons per year of PM and PM₁₀, which means the facility is a "synthetic minor" (not major) facility and, therefore, is not subject to Title V requirements.

Violations

Water Quality Violations

61. The Defendant has discharged wastewater into a water of the state at levels exceeding monthly average and/or daily maximum effluent limitations for mass and/or concentration for biological oxygen demand (BOD), total suspended solids (TSS), ammonia-nitrogen (NH₃-N), oil and grease, and/or fecal coliform during the period including but not limited to May, June, October, November, and December of 2007; March, April, May, and June of 2008; January, February, March, April, May, June, November, and December of 2009; and January, March, April, May, June, and July of 2010, in violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 64.3(1), and Iowa NPDES Permit No. 7856100.

62. The Defendant has failed to operate its facility as efficiently as possible, and failed to provide appropriate quality assurance procedures to maintain compliance with the conditions of its permit in violation of 567 Iowa Admin. Code 64.3(1) and NPDES Permit No. 7856100, Condition 8.

63. The Defendant has failed to properly measure the twenty-four (24) hour total flow of both the influent and the effluent in violation of NPDES Permit No. 7856100, Monitoring and Reporting Requirements.

64. The Defendant failed to timely apply for renewal of its NPDES permit within the proper time frame in violation of 567 Iowa Admin. Code 64.8(1).

65. The Defendant's wastewater discharges into the West Nishnabotna River produced foam on the water resulting in violation of the water quality standard contained in 567 Iowa Admin. Code 61.3(2)"b".

66. The Defendant's wastewater discharges into the West Nishnabotna River produced a discoloration of the water and meat odor to the water resulting in violation of the water quality standard contained in 567 Iowa Admin. Code 61.3(2)"c".

Air Quality Violations

67. The Defendant failed to apply for twenty-six (26) air quality construction permits for equipment installed in the facility since 1995, until February 11, 2008, in violation of Iowa Code section 455B.134(3)(a) and 567 Iowa Admin. Code 22.1(1).

68. The Defendant has the potential to emit over 100 tons per year of particulate matter (PM) and fine particulate matter (PM₁₀) and did not apply for a Title V permit within twelve (12) months of becoming subject to a Title V permit in violation of 567 Iowa Admin. Code 22.101(1)"b" and 567 Iowa Admin. Code 22.105(1)"a"(2).

69. The Defendant, which is required to obtain a Title V operating permit, operated without a Title V operating permit until June 18, 2008, when the facility was permitted out of Title V requirements, in violation of 567 Iowa Admin. Code 22.101(1)“b”.

Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

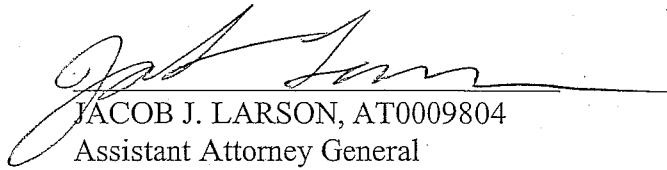
- a. assess a civil penalty against Defendant OSI Industries, L.L.C., pursuant to Iowa Code section 455B.191(2) for each day of violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 61.3(2)“b”-“c”, 64.3(1) and 64.8(1), and NPDES Permit No. 7856100, not to exceed Five Thousand Dollars (\$5,000.00);
- b. assess a civil penalty against Defendant OSI Industries, L.L.C., pursuant to Iowa Code section 455B.146 for each day of violation of Iowa Code section 455B.134(3)(a) and Iowa Admin. Code 22.1(1), 22.101(1)“b” and 22.105(1)“a”(2), not to exceed Ten Thousand Dollars (\$10,000.00); and
- c. issue a permanent injunction, pursuant to Iowa Code sections 455B.146 and 455B.191(5), enjoining Defendant OSI Industries, L.L.C. from any violation of Iowa Code sections 455B.134(3)(a) and 455B.186(1), 567 Iowa Admin. Code 22.1(1), 22.101(1)“b”, 22.105(1)“a”(2), 61.3(2)“b”-“c”, 64.3(1), and 64.8(1), and NPDES Permit No. 7856100.

Plaintiff further requests that the Court tax the costs of this action to the Defendant OSI Industries and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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